

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

**BECKLEY DIVISION**

**DREMA M. WEISS,**

**Plaintiff,**

**V.**

**JO ANNE B. BARNHART,**  
**Commissioner of Social Security,**

**Defendant.**

**CIVIL ACTION NO.: 5:04-0861**

## **PROPOSED FINDINGS AND RECOMMENDATION**

This is an action seeking review of the final decision of the Commissioner of Social Security denying the Plaintiff's Application for disability benefits under the Social Security Act, 42 U.S.C. §§ 401-433. This case was referred to the undersigned United States Magistrate Judge by Standing Order to consider the pleadings and evidence, and to submit Proposed Findings of Fact and Recommendation for disposition, all pursuant to 28 U.S.C. § 636(b)(1)(B).

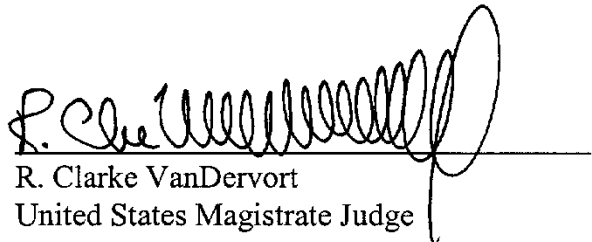
On November 15, 2004, counsel for Plaintiff filed a Motion for Voluntary Dismissal of this action. (Doc. No. 9.) Counsel asserts that there are no grounds on which to proceed with this appeal, and indicates that the Commissioner has no objection to this Motion. As Defendant has already filed an Answer, this action can only be voluntarily dismissed by Order of the Court, under Rule 41(a)(2). Accordingly, for the reasons stated herein, it is hereby respectfully **RECOMMENDED** that the District Court **GRANT** Plaintiff's Motion to Voluntarily Dismiss, deem this action and so Order it **voluntarily DISMISSED** without prejudice, pursuant to Federal Rule of Civil Procedure 41(a), and remove it from the docket of the Court.

The parties are notified that this Proposed Findings and Recommendation is hereby **FILED**, and a copy will be submitted to the Honorable David A. Faber, Chief United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rules 6(e) and 72(b), Federal Rules of Civil Procedure, the parties shall have three days (mailing/service) and then ten days (filing of objections) from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this Court, specific written objections, identifying the portions of the Proposed Findings and Recommendation to which objection is made, and the basis of such objection. Extension of this time period may be granted for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140, 155 (1985); Wright v. Collins, 766 F.2d 841, 846 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984). Copies of such objections shall be served on opposing parties, Chief Judge Faber, and this Magistrate Judge.

The Clerk is directed to file this Proposed Findings and Recommendation and to mail a copy of the same to counsel of record.

Date: November 18, 2004.

  
R. Clarke VanDervort  
United States Magistrate Judge